(27,754)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 397.

WILLIAM HOLLIS AND SAM GOODMAN, APPELLANTS,

vs.

CHARLES W. KUTZ, CHAIRMAN; LOUIS BROWNLOW AND W. GWYNN GARDINER, COMMISSIONERS OF THE DISTRICT OF COLUMBIA, AND AS SUCH CONSTITUTING THE PUBLIC UTILITIES COMMISSION OF THE DISTRICT OF COLUMBIA, AND THE WASHINGTON GAS LIGHT COMPANY.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

INDEX.

	Page.
Caption	1
Transcript from the supreme court of the District of Columbia	1
Caption	1
Bill for injunction	1
Exhibit A—Order of Commissioners, March 15, 1918	11
B—Statement of sales, &c	14
C—Order of Commissioners, March 15, 1919	15
D—Statement of gas used, &c	18
Motion of defendants Kutz, Brownlow, and Gardiner to dismiss	20
Motion of Washington Gas Light Company to dismiss	20
Opinion of the court	21
Plaintiffs' motion to amend bill	22

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Page.
Leave to amend bill..... 23
Amendment to bill..... 23
Motion to dismiss amended bill..... 24
Opinion of court..... 24
Decree dismissing amended bill..... 24
Appeal noted..... 24
Memorandum: $50 deposited in lieu of appeal bond..... 25
Assignment of errors..... 25
Designation of record..... 25
Clerk's certificate..... 26
Orders of argument, &c..... 27
Opinion..... 28
Decree..... 30
Petition for appeal..... 31
Order allowing appeal..... 31
Amended petition for appeal..... 32
Order for cash deposit in lieu of bond..... 32
Citation and service..... 33
Clerk's certificate..... 33

Court of Appeals of the District of Columbia.

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a Supreme Court of the District of Columbia.

Equity. No. 36788.

WILLIAM HOLLIS and SAM GOODMAN, Plaintiffs,

vs.

CHARLES W. KUTZ, Chairman; LOUIS BROWNLOW and W. GWYNN Gardiner, Commissioners of the District of Columbia, and as Such Constituting the Public Utilities Commission of the District of Columbia, and The Washington Gas Light Company, Defendants.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, that in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to-wit:

No. 3296.

WILLIAM HOLLIS et al., Appellants,

vs.

CHARLES W. KUTZ et al.

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1 *Bill for Injunction.*

Filed May 15, 1919.

In the Supreme Court of the District of Columbia.

Equity. No. 36788.

WILLIAM HOLLIS and SAM GOODMAN, Plaintiffs,

vs.

CHARLES W. KUTZ, Chairman; LOUIS BROWNLOW and W. GWYNN Gardiner, Commissioners of the District of Columbia and as such Constituting the Public Utilities Commission of the District of Columbia, and The Washington Gas Light Company, Defendants.

To the Supreme Court of the District of Columbia, holding an Equity Court for the said District of Columbia:

The Bill of Complaint of William Hollis and Sam Goodman, the above named plaintiffs, shows to the court as follows:

1. The plaintiff, William Hollis, is a citizen and resident of the District of Columbia and is engaged in the manufacture and sale of candy in said District at his store at 322 Cedar Street, Takoma Park, and in the conduct of such business is a user and private consumer of gas for lighting and heating purposes at said 322 Cedar Street, said gas being furnished by the defendant, The Washington Gas Light Company.

2. The plaintiff, Sam Goodman, is a citizen and resident of the District of Columbia, living at 339 Cedar Street, Takoma Park, in said District, and is engaged in the tailoring, cleaning and pressing business at his establishment at 6912—4th Street in Takoma Park, District of Columbia, and, at his aforesaid residence, and
2 in the conduct of his business at the aforesaid 6912—4th Street, is a user and private consumer of gas for lighting and heating purposes, said gas being furnished by the defendant, The Washington Gas Light Company.

3. That said plaintiffs, William Hollis and Sam Goodman, bring this suit under and by virtue of Paragraph 64 of Section 8 of an

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Act of Congress of March 4, 1913, entitled "An Act Making Appropriations for the Expenses of the Government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for Other Purposes."

4. That the defendants, Charles W. Kutz, Louis Brownlow and W. Gwynn Gardiner, are the duly appointed and qualified Commissioners of the District of Columbia, and, by virtue of their said positions, are made by Section 8 of the Act of Congress of March 4, 1913, aforesaid, The Public Utilities Commission of the District of Columbia, and the said Charles W. Kutz, Louis Brownlow and W. Gwynn Gardiner have duly qualified as the said Public Utilities Commission, and are sued as such Commissioners.

5. That the defendant, The Washington Gas Light Company, is a corporation organized and doing business under an Act of Congress of July 8, 1848, having an office and place of business in the District of Columbia, and, as such, engaged in the manufacture and dispensing of gas for lighting, heating, power and other purposes in the District of Columbia, and is a public utility as defined by Section 8 of the Act of Congress of March 4, 1913, aforesaid.

6. That by an Act of Congress of September 1, 1916, Chap. 433, 39 Stat. L., 676, entitled "An Act Making Appropriations
3 for the Expenses of the Government of the District of Columbia for the fiscal year ending June 30, 1917, and for Other Purposes," it is provided as follows:

Sec. 6. That hereafter no part of any money appropriated by this or any other act shall be used for the payment to the Washington Gas Light Company or the Georgetown Gas Light Company for any gas furnished by said companies for use in any of the public buildings of the United States or the District of Columbia at a rate in excess of 70 cents per 1000 cubic feet.

On and after the first day of October, 1916, the Washington Gas Light Company shall not charge or collect for gas furnished a private consumer in any part of the District of Columbia at a rate in excess of 75 cents per 1,000 cubic feet of gas so furnished: Provided, That if a consumer of gas other than the Government or the District of Columbia shall not pay monthly any gas bill within ten days after the same shall have been presented, said gas company may charge and collect from any such consumer so failing to pay said gas bill as aforesaid 10 cents additional for each 1,000 cubic feet of gas represented by said bill: And provided further, That nothing herein contained shall be construed as limiting or taking away any of the powers now vested by law in the Public Utilities Commission of the District of Columbia.

7. That on December 1, 1917, the defendant, The Washington Gas Light Company on its own behalf and on behalf of the Georgetown Gas Light Company, all of whose stock is owned by The Washington Gas Light Company, under and by virtue of said Act of

March 4, 1913, petitioned the Public Utilities Commission of the District of Columbia for an advance in the rates then being charged by said Washington Gas Light Company and fixed by statute as above set out, for gas furnished to consumers in the District of Columbia to a proposed rate named in said petition of $1.10 per thousand cubic feet.

8. That on December 18, 1917, a public hearing was held on the aforesaid application for advance in rates in what was designated as Formal Case No. 13, at which hearing the defendant, The Washington Gas Light Company, introduced evidence as to
4 operations and expenditures upon which justification for the proposed advance in rates were based.

9. That additional hearings in said Case No. 13 were held on February 9, 11, 12 and 16, 1918.

10. That at said hearing in Formal Case No. 13 on December 18, 1917, it was urged by Mr. Benjamin S. Minor, representing the Washington Gas Light Company, as follows (p. 12 Trans.):

"If we continue under the 73½ cent rate—75 cents to the public and 70 cents to the United States and District of Columbia, which gives us an average of only 73½ cents per M. cubic feet—we will not be able to make our operating expenses. In fact, based upon the estimates we have for 1918, it will cost us 79½ cents, or practically so, to manufacture gas and deliver it to the burner, which includes only operating costs, taxes and maintainence, with nothing left for dividends to stockholders or interest to bond holders."

11. That on March 15, 1918, the Public Utilities Commission, through its Secretary, Walter C. Allen, filed its report and decision in said case No. 13, and issued its order therein, No. 254, increasing the rate permitted to be charged for gas furnished by the defendant, the Washington Gas Light Company, and by the Georgetown Gas Light Company to any private consumer in the District of Columbia for lighting, heating, power, or for any other purpose, from the statutory rate of 75 cents aforesaid, to a rate of 90 cents per thousand cubic feet, a copy of which order, No. 254, is herewith filed, marked "Exhibit A," and prayed to be read as a part hereof.

12. That on November 21, 1918, the defendant, The Washington Gas Light Company, on behalf of itself and on behalf of the Georgetown Gas Light Company, all of whose stock is owned by the former company, under and by virtue of said Act of March 4, 1913, petitioned John G. D. Knight, Louis Brownlow and W. Gwynn Gardiner, then constituting the Public Utilities
5 Commission of the District of Columbia, for an additional advance in the rate charged for gas in the District of Columbia, from the aforesaid rate of 90 cents per thousand cubic feet, authorized by the aforesaid order, No. 254, of the Public Utilities

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Commission, to a rate proposed in said petition of $1.10 per thousand cubic feet of gas sold in said District of Columbia.

13. That on December 10, 1918, a public hearing was held on the said application of November 21, 1918, in what was designated as Formal Case No. 70, and at which hearing the defendant, the Washington Gas Light Company, submitted statements showing the cost of manufacturing gas during the year 1918, made up of actual cost for the first nine months of that year and an estimated cost for the balance of the year. An additional hearing was held in said Formal Case No. 70 on March 7, 1919, at which revised statements were furnished by the defendant, the Washington Gas Light Company, showing actual results and costs of operation for the entire year of 1918.

14. That at said hearing in Formal Case No. 70, on December 10, 1918, it appeared from Exhibit 3 of the said Washington Gas Light Company, a copy of which is herewith filed, marked "Exhibit B," and prayed to be read as a part hereof, that

(a) The total sales of gas for the first nine months of the year 1918 in the District of Columbia, for United States buildings, municipal purposes, park lamps and street lamps, amounted to 187,844,000 cubic feet, the average price for which was 52.15 cents per thousand;

6 (b) The total sales to other companies in the District amounted to 168,592,000 cubic feet, the average price for which was 51.32 cents per thousand;

(c) The total sales in the District for said period, including those to private consumers, amounted to 2,908,701,000 cubic feet, at an average price of 80.53 cents per thousand cubic feet.

15. That at said hearing in Formal case No. 70, it also appeared (Trans. p. 45), that if the private consumer of gas in the District had paid 90 cents per thousand cubic feet throughout the year 1918, and had the United States Government and the District Government paid the same rate instead of the rate actually paid, the defendant gas company would have made expenses and received a return of approximately 6 per cent.

16. That on March 15, 1919, the Public Utilities Commission, through defendants, Charles W. Kutz and W. Gwynn Gardiner, Commissioners of the District of Columbia, filed its report and decision in said case No. 70, and issued its order therein, No. 314, increasing the rate permitted to be charged for gas furnished by the defendant, The Washington Gas Light Company and by the Georgetown Gas Light Company, to any private consumer in the District of Columbia for lighting, heating, power, or for any other purposes, to a price not to exceed 95 cents per thousand cubic feet, a copy of which order, No. 314, is filed herewith, marked "Exhibit C," and prayed to be read as a part hereof.

17. That on December 10, 1918, at the hearing before the Public Utilities Commission in Formal Case No. 70, aforesaid, there was entered the appearance of a certain Roscoe F. Walter in
7 opposition to the proposed increase in gas rates in such case, the same appearing on behalf of himself, and certain others, citizens of Takoma Park, District of Columbia.

18. That just previous to the close of said hearing in Case No. 70 on said date, December 10, 1918, it was concluded by said Commission that an additional hearing in said case would be held, the exact date for which was later to be determined by said Commission.

19. That at various times subsequent to December 10, 1918, and prior to March 1, 1919, the said Roscoe F. Walter called at the office of the Secretary of said Commission to ascertain the date on which the additional hearing in said case would be held, and at each time was advised by the Secretary that such date had not then been fixed.

20. That after said Roscoe F. Walter had called a number of times at the office of the Secretary of said Commission to ascertain when the proposed additional hearing in said case would be held and was unable to secure such information as stated aforesaid, he explained to the Secretary that the duties of the said Roscoe F. Walter as an employee of the Interstate Commerce Commission often called him away from the City of Washington and for this reason desired to ascertain as nearly as possible when the proposed additional hearing would be held.

21. That thereupon the said Roscoe F. Walter was told by the Secretary of the Public Utilities Commission that the date for the proposed additional hearing in Case No. 70 had not yet been fixed, but was advised that when such date had been fixed, the said
8 Roscoe F. Walter would be given ten days' notice in advance of the time set for such hearing.

22. That, relying on such advice, the said Roscoe F. Walter directed no further inquiry to the office of the Secretary of said Commission as to when the proposed additional hearing in said case No. 70 would be held, and left Washington, D. C., on March 1, 1919, on official business for the Interstate Commerce Commission, going as far as Santa Fe, N. M., and returning to Washington on April 2, 1919.

23. That no notice of the date fixed for the additional hearing in said case was furnished by said Commission to the said Roscoe F. Walter, and the same did not know, or have any opportunity to know, of such date until his return to Washington on the date aforesaid, and as a result of not obtaining such notice was precluded from being present at said hearing and from having an opportunity to be heard on the issues involved in such hearing.

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24. That the plaintiff, William A. Hollis, between the effective dates of the aforesaid orders of the Public Utilities Commission, Nos. 254 and 314, to wit: March 20, 1918, and March 20, 1919, respectively, was a private consumer of gas furnished to him in the District of Columbia by the defendant, the Washington Gas Light Company, to the extent of 112,500 cubic feet, and pursuant to the provisions of said order No. 254 of said Commission, and to the charge for such gas made by said gas company in pursuance of said order, was forced to pay to said Washington Gas Light Company for such gas at the rate of 90 cents per thousand cubic feet of gas so furnished, amounting in all to the sum of $101.25, as appears from plaintiff's "Exhibit D," herewith filed and prayed to be read as a part hereof.

9 25. That the plaintiff, William A. Hollis, between the effective date of the aforesaid order No. 314 of the Public Utilities Commission, to wit: March 20, 1919, and April 20, 1919, was a private consumer of gas furnished to him in the District of Columbia by the defendant, The Washington Gas Light Company, to the extent of 11,400 cubic feet, and pursuant to the requirements of said order No. 314 of said Commission and to the charge for such gas by said gas company, made in pursuance of said order, was forced to pay to the said Washington Gas Light Company for such gas at the rate of 95 cents per thousand cubic feet of gas so furnished, amounting to the sum of $10.83, as appears from plaintiff's "Exhibit D," aforesaid.

26. That the plaintiff, Sam Goodman, between the effective dates of the aforesaid orders of the said Public Utilities Commission, Nos. 254 and 314, to-wit: March 20, 1918, and March 20, 1919, respectively, was a private consumer of gas furnished to him in the District of Columbia by the defendant, the Washington Gas Light Company, to the extent of 263,400 cubic feet, and pursuant to the requirements of said order No. 254 of said Commission and to the charge for such gas by said gas company made in pursuance of said order, was forced to pay to said Washington Gas Light Company for such gas at the rate of 90 cents per thousand cubic feet of gas so furnished, amounting in all to the sum of $237.24 as appears from plaintiff's "Exhibit D," aforesaid.

27. That the plaintiff, Sam Goodman, between the effective date of the aforesaid order No. 314 of the said Public Utilities Commission, to wit: March 20, 1919, and April 19, 1919, was a private consumer of gas furnished to him in the District of Columbia by the defendant, The Washington Gas Light Company, to the extent of 24,100 cubic feet, and pursuant to the requirements of said order No. 314 of said Commission, and to the charge for such gas by said gas company made in pursuance of said order, was forced to pay to said Washington Gas Light Company for such gas at the rate of 95 cents per thousand cubic feet of gas

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so furnished, amounting in all to the sum of $22.90, as appears from plaintiff's "Exhibit D," aforesaid.

Plaintiffs, therefore, aver:

28. That said Public Utilities Commission by neither of said orders, Nos. 254 and 314, nor by any other order, has increased or undertaken to increase the rate to be charged consumers of gas in the District of Columbia, other than that charged to the private consumers, and fixed by the statute aforesaid at 75 cents per thousand cubic feet.

29. That said orders, Nos. 254 and 314, of the Public Utilities Commission aforesaid, are and were unlawful and null and void, ab initio, for the reason that the same were not made in accordance with the requirements of the aforesaid statute of March 4, 1913, in that said orders undertake to increase the rate to be charged private consumers for gas furnished them in the District of Columbia, from the statutory rate of 75 cents per thousand cubic feet to 90 cents in order No. 254, and therefrom to 95 cents in order No. 314, and without regard to the fact that the rate to be charged the United States Government, the District of Columbia, and other consumers not included in the term "private consumers" was not also increased, the rate to the United States Government and
11 to the District Government remaining as provided in the statute of March 4, 1913, aforesaid, at 70 cents per thousand cubic feet.

30. That said orders, Nos. 254 and 314 of the Public Utilities Commission aforesaid are unlawful, confiscatory, and in violation of the Federal Constitution in that such orders attempt to increase the rate to be charged to the private consumers in order that the defendant, The Washington Gas Light Company, and The Georgetown Gas Light Company, may receive a reasonable income on the valuation of their properties, and thereby be enabled to sustain their credit, and conduct their business at a reasonable profit, while at the same time the rate to be charged for gas furnished to the United States Government and to the Government of the District of Columbia remains at 70 cents per thousand cubic feet, and resulting in the condition that any loss to the gas companies by reason of their being required to furnish gas to the United States and the District of Columbia at the rate of 70 cents per thousand cubic feet, shall be made up by the private consumers of gas in the District of Columbia.

31. That said orders, Nos. 254 and 314, of the Public Utilities Commission aforesaid are unlawful, null and void, ab initio, unreasonable, discriminatory and unconstitutional for the reasons above stated, and for the additional reason that it appears that said orders were made for the purpose of guaranteeing to the gas companies aforesaid a reasonable profit on their investments and to make up for losses sustained by them by reason of large amounts of their

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product being sold to consumers in the District, other than private consumers, at a price far below the 70 cent rate provided by the statute aforesaid as to the United States and District Governments.

12 32. That said orders, Nos. 254 and 314, of the Public Utilities Commission aforesaid are unlawful and null and void, ab initio, for the reason that the provisions of the Act of March 4, 1913, aforesaid, giving to the Public Utilities Commission of the District of Columbia the power to regulate, fix and determine reasonable rates to be charged by public utilities for their respective products, service, etc., in the District of Columbia, do not authorize said Commission to increase the rate to private consumers or individuals receiving such product, service, etc., and at the same time not regulate, fix and determine the price to be charged the United States Government and the District of Columbia.

33. That said orders, Nos. 254 and 314, of the said Public Utilities Commission are unlawful and null and void, ab initio, for the reason that the provisions of the Act of March 4, 1913, aforesaid, giving to said Public Utilities Commission the power to regulate, fix and determine reasonable rates to be charged by the public utilities in the District of Columbia for their respective products, service, etc., require that such regulation shall extend to all consumers and individuals receiving such product, service, etc., except those conducting a like business for a like and contemporaneous service.

34. That said order, No. 314, is unlawful and null and void, ab initio, for the additional reason that it was not made in accordance with the provisions and requirements of the aforesaid statute of March 4, 1913, in that it was made without the statutory notice provided therein, having been given to all parties to the hearing in Formal Case No. 70, and having an interest in the matters therein involved and who had caused to have entered their appear-
13 ances in said case, and without all of said parties having an opportunity to be heard in said case.

The Premises Considered, Wherefore, Plaintiffs Pray:

(*a*) That a writ of subpœna issue out of the Clerk's office of this Honorable Court directing the defendants, the said Charles W. Kutz, Louis Brownlow and W. Gwynn Gardiner, Commissioners of the District of Columbia, and as such constituting the Public Utilities Commission of said District, and the said Washington Gas Light Company to appear herein on a day certain and then and there truly and completely to answer, but not under oath (an answer under oath being expressly waived), the exigency of this bill.

(*b*) That the said defendants, Charles W. Kutz, Louis Brownlow and W. Gwynn Gardiner, Commissioners of the District of Columbia, and as such constituting the Public Utilities Commission of said District, be required to cause a certified transcript of all proceed-

ings had and testimony taken in connection with the investigations in the aforesaid Formal Cases, Nos. 13 and 70, and the issuance of said orders in said cases, Nos. 254 and 314, respectively, to be filed with the Clerk of the Supreme Court of the District of Columbia, in accordance with Paragraph 52 of Section 8 of the aforesaid Act of March 4, 1913.

(*c*) That the said defendants, Commissioners of the District of Columbia, be required to furnish to the plaintiffs free of cost a copy of the certified transcript of all proceedings had and testimony taken in connection with said investigations in Formal Cases Nos. 13 and 70, in accordance with Paragraph 53 of Section 8 of the aforesaid Act of March 4, 1913.

14 (*d*) That said orders, Nos. 254 and 314, of the Public Utilities Commission, aforesaid, by decree of this Honorable Court be vacated and set aside, as unlawful, void and without legal effect, as provided by Section 8 of the aforesaid Act of March 4, 1913.

(*e*) That the defendant, the Washington Gas Light Company, be perpetually enjoined from charging for its gas furnished to private consumers in the District of Columbia any price in excess of that provided in the aforesaid Act of Congress of September 1, 1916, to wit: 75 cents per thousand cubic feet.

(*f*) That the defendant, The Washington Gas Light Company, be required to refund to the plaintiff, William A. Hollis, the amount of money that said plaintiff was forced to pay above the statutory rate of 75 cents per thousand cubic feet, on the amounts of gas furnished by said defendant to said plaintiff in the District of Columbia, as appears in plaintiff's "Exhibit D", aforesaid, and amounting in all to 112,500 cubic feet at 90 cents per thousand cubic feet, and 11,400 cubic feet at 95 cents per thousand cubic feet, to wit: $19.92, with interest to date on the respective amounts of charges above the 75-cent rate making up said $19.92, from the dates of payment thereof.

(*g*) That the defendant, The Washington Gas Light Company, be required to refund to the plaintiff, Sam Goodman, the amount of money that said plaintiff was forced to pay above the statutory rate of 75 cents per thousand cubic feet, on the amounts of gas furnished by said defendant to said plaintiff in the District of Columbia, as appears in plaintiff's "Exhibit D", and amounting in all to 263,400 cubic feet at 90 cents per thousand cubic
15 feet, and 24,100 cubic feet at 95 cents per thousand cubic feet, to wit: $45.26 with interest to date on the respective amounts of charges above the 75-cent rate making up said $45.26, from the dates of payment thereof.

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(*h*) And that the plaintiffs have such other and further relief as the nature of this case may require and to this Honorable Court may seem meet and proper.

WM. HOLLIS,
SAM. GOODMAN,
Plaintiffs.

ROSCOE F. WALTER,
Attorney for Plaintiffs.

DISTRICT OF COLUMBIA, *ss:*

I, Sam Goodman, on oath say that I am plaintiff in the foregoing bill; that I have read the said bill and know the contents thereof; that the allegations therein set forth are true.

SAM. GOODMAN.

Subscribed and sworn to before me this 14 day of May, 1919.
[SEAL.] WILLIAM K. HILL,
Notary Public, District of Columbia.

16 EXHIBIT A.

Public Utilities Commission of the District of Columbia.

Order No. 254.

Copy.

Formal Case No. 13.

March 15, 1918.

In the Matter of Application of the WASHINGTON GAS LIGHT COMPANY and the GEORGETOWN GAS LIGHT COMPANY for an Increase in Rates.

By the Commission: On December 1, 1917, the Washington Gas Light Company on its own behalf and on behalf of the Georgetown Gas Light Company, all of whose stock is owned by the Washington Gas Light Company, petitioned this Commission for an increase in the rate to be charged by it for gas furnished to consumers in the District of Columbia. The company presented with its petition a detailed analysis of its operations during the year ended September 31, 1917, and the estimated cost of manufacturing and delivering gas during the year ending December 31, 1918, claiming those figures showed that at the present rates for gas, the company would operate at a loss.

A public hearing was held on December 18, 1917, at which hearing the company formally presented its petition and introduced the evidence of the experts who had made the analysis of its operations and expenditures upon which its petition was based. The testimony and exhibits were carefully studied by the Commission's experts, who made a thorough examination of the books and accounts of the com-

pany. At the hearings on February 9, 11, 12 and 16, 1918, the results of their investigations were introduced in evidential
17 form and the company subjected them to a thorough cross-examination.

The evidence shows that the costs of coal at the mine during 1917 increased from $4.55 to $5.65 per ton, and oil from 4.4 cents per gallon to 8 cents at present quotations and that the cost of labor and material for maintenance and distribution has also greatly increased.

The manufacture of gas for heat and illumination is substantially the conversion of fuel from one form into another. The fuel thus converted consists of coal and oil which are the raw materials from which gas is made and the cost of these two raw materials (as shown by the actual costs during the year ended September 30, 1917) represents approximately eighty per cent of the manufactured gas. It is self-evident that when the cost of coal to the gas manufacturer increases twenty-five per cent and the cost of oil eighty-two per cent, that the cost of the manufactured gas will increase in approximately a similar proportion so far as these basic elements are concerned, and will be further increased if the cost of labor and maintenance has also risen. All of these conditions have taken place while the selling price of gas has remained stationary.

In view of all these considerations, the Commission feels that it would be unmindful of its plain duty if it refused to grant such measure of relief as existing conditions not only show to be proper, but thoroughly justified.

In view of the fact that an appeal is now pending from the former valuation of the properties of the two companies heretofore made by this Commission; in order to preserve in all respects the in-
18 terests of the public should it appear by any proceeding that an increase in rates should not have been allowed by the Commission at this time, the Commission has required of the company and the company has filed with the Commission its agreement over the signature of its President which said agreement is as follows:

"In the matter of its application for an increase in the price to be charged for gas, in consequence of the conditions shown by the evidence taken under it, and in order to obviate any obstacle which it has been suggested may exist by reason of the pending appeal from the order fixing the valuation of its property, the Washington Gas Light Company states its willingness to accept that valuation as the basis for such rate as the Commission may fix under the Company's pending application, to be binding upon it as the correct valuation, without prejudice to and notwithstanding the appeal, for such period of time as the rate which the Commission shall fix under the said application shall continue.

The Gas Company further agrees that if it shall appear from the final decision in the valuation appeal case now pending in the Supreme Court of the District of Columbia, or otherwise, that the existing rate which it is permitted to charge to consumers of gas could or should not legally have been increased, the Company will refund to the consumers any difference between the existing rate and the increased rate which the Commission shall find to be proper."

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The Commission believes that by this agreement the public is protected by every safeguard within the power of the Commission to require.

The increase in the cost of production has been occasioned by conditions brought about by the war and has imposed a burden which must be borne by both producer and consumer and so distributed as to be equitable to both. Under the conditions which have arisen because of an unprecedented situation, and in view of all the circumstances of the case, and after giving the rights of the company and of the citizens the most careful study, the Commission feels that the fixing of a price for gas which would yield approximately a six per cent return to the company on the Commission's valuation of
19 its property will enable the company to sustain its credit and conduct its business at a reasonable profit, and that the increased cost to the consumer should be cheerfully accepted as his share of an unavoidable burden.

It being the opinion of the Commission, that the circumstances justify an increase in the rate to be charged for gas, it is, therefore—

Ordered:

(1) That the rate to be charged for gas furnished by any public utility to any private consumer in the District of Columbia for lighting, heating, power, or for any other purpose, shall not exceed ninety (90) cents per thousand cubic feet.

(2) That this rate shall apply uniformly to all private consumers in the said District of Columbia, whether supplied with gas by the Washington Gas Light Company or by the Georgetown Gas Light Company.

(3) That if any private consumer of gas shall not pay monthly any gas bill within ten days after the same shall have been presented, the gas company supplying gas to such consumer may charge and collect from said consumer so failing to pay said gas bill as aforesaid ten (10) cents additional for each one thousand (1000) cubic feet of gas represented by said bill, as now required by law.

(4) That the quality and pressure of gas furnished by the said Washington Gas Light Company and by the said Georgetown Gas Light Company shall at all times comply with the standards now prescribed therefor by this Commission.

(5) That this rate shall apply to all gas furnished after
20 March 20, 1918, and shall continue in force until changed by the Commission.

A true copy:

WALTER C. ALLEN,
Executive Secretary.

W. C. A./H. B.

EXHIBIT B.

P. U. C. No. 2431/22.

Copy.

Exhibit 3.

Washington Gas Light Company.

Statement of Sales of Gas to Private Consumers, to the District of Columbia and to other companies for the nine months ended September 30, 1918, showing the average price received from each group and the average price received for all gas sold.

Sales of Gas.

Nine Months Ended September 30, 1918.

Private Consumers:

	M. cu. ft.	Amount.	Average price, cents per M.
Ordinary and Prepayment Meters	2,552,265	$2,157,999.90	84.55
District of Columbia:			
U. S. Buildings	59,160	42,734.41	72.23
Municipal purposes	12,516	8,729.88	69.75
Park Lamps	4,066	1,457.73	35.85
Street Lamps	112,102	45,044.02	40.18
Total, D. C.	187,844	97,966.04	52.15
Other Companies	168,592	86,516.04	51.32
Total D. C. and Other Companies	356,436	184,482.08	51.76
Total Sales	2,908,701	$2,342,481.98	80 53

NOTES.—1. The above tabulation shows that 356,436 M. cubic feet, or 12.25 per cent of the total, was sold at a price slightly less than 52 cents per M.

2. The rate of 90 cents per thousand to private consumers took effect April 1, 1918. The gas sold in January, February, and March, 1918, at the 75-cent rate was 1,039,532,400 cu. ft.

21 If the 90-cent rate had been in effect from January 1, 1918, the increased income would have been $155,929.86 (1,039,-532.4 x .15), the to-al income from gas would have been $2,498,-411.84 and the average price 85.89 cents per M.

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EXHIBIT C.

P. U. C., No. 2431/28.

Public Utilties Commission of the District of Columbia.

Order No. 314.

Copy.

March 15, 1919.

Formal Case No. 70.

In the Matter of the Application of the WASHINGTON GAS LIGHT COMPANY for an Increase in Rates.

By the Commission: On November 21st, 1918, the Washington Gas Light Company on behalf of itself and on behalf of the Georgetown Gas Light Company, petitioned this Commission for an increase in the rate charged for gas furnished to private consumers in the District of Columbia, claiming that the income received in 1918 was inadequate for the proper operation of plants, maintenance of credit, and a return of six per cent on the fair value of their properties, as fixed by this Commission.

On October 1st, 1916, the price of gas to private consumers in the District of Columbia was fixed by Act of Congress at seventy-five cents per thousand cubic feet. The price was increased to ninety cents per thousand cubic feet on March 15th, 1918, by Order No. 254, issued by this Commission. This increase was based upon an estimate that the new rate would yield a return to the companies of approximately six per cent on the fair value of the properties
22 of these companies as determined by the Commission.

At a public hearing on the present application, December 10th, 1918, the Washington Gas Light Company submitted statements showing cost of manufacture for 1918, made up of actual cost for the first nine months of the year and estimated cost for the balance of the year. At the subsequent hearing March 7th, 1919, revised statements were presented giving the actual results for the year 1918. These statements, which have been carefully examined and verified by the accountants of the Commission, show the net income of the Washington Gas Light Company for the year to have been $503,287.22, yielding a return of approximately five per cent on the fair value of the property of the two companies as determined by the Commission and brought down to the year 1918.

The Commission has delayed rendering a decision in this case in the hope that the abnormally high cost of manufacture resulting from the war would be materially reduced as a result of the signing of the armistice, but the evidence shows that so far there has been no material reduction.

In its decision in the Potomac Electric Power Company's rate case,

Order No. 223, the Commission held that rates which would yield a return of seven per cent on the fair value of the property of the company that was used and useful in the service of the public, were just and reasonable. The business of manufacturing and distributing gas, as far as risk to the investor is concerned, is quite similar to that of manufacturing and distributing electric current for light and power, so that if seven per cent represents a fair rate of return for an electric power company, a similar rate should be allowed
23 for a gas company. Under the present abnormal conditions, however, the Commission feels that the burdens imposed by the war should not be borne wholly by the consumer, but should be divided between the utility and the consumer. Therefore, while the Commission adheres to its opinion that under normal conditions a seven per cent return should be allowed gas and electric companies in order that capital for necessary extensions may be readily obtained, it is also of the opinion that until normal conditions are restored, rates for service of this character which will yield a return of six per cent are reasonable and in no sense confiscatory.

In determining the price to be charged to private consumers that will yield a return to the companies of six per cent, it is necessary to make certain assumptions, so that in compiling the following table, the Commission assumes that the demand for gas in the next six months will not be less than it was during the corresponding period last year; that the price of labor will be equal to the average price paid during 1918, and that the present prices of coal and oil will be maintained.

Basis for Rate.

Charges.

	Washington Gas Light Company.	Georgetown Gas Light Company.	Combined Companies.
Operating Expenses 1918	$2,780,577.81	$228,749.12	$3,009,326.93
Taxes, 1918	151,882.13	9,827.46	161,709.59
Increased Cost of Coal	61,009.29	1,723.71	62,793.00
Increased Cost of Oil	148,525.42	3,333.47	151,858.89
Return of 6% on Fair Value brought up to Dec. 31, 1918	577,421.80	52,738.35	630,160.15
Total charges	$3,719,476.45	$296,372.11	$4,015,848.56

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24 Credits.

	Washington Gas Light Company.	Georgetown Gas Light Company.	Combined Companies.
Residuals, etc.	$83,141.09	$10,834.23	$93,975.32
Sales to U. S. and District	134,183.21	11,081.29	145,264.50
Sales to other Companies	9,403.92	32,822.33	42,226.25
Intercompany Sales ...	.....	112,827.53	112,827.53
Total credits	$226,728.22	$167,565.38	$394,293.60

91 Net cost to consumers:

3,814,912,000 cu. ft. @ $.9493 per thousand $3,621,554.96

This table shows, that under the above assumption, the companies must receive 95 cents per thousand cubic feet for all gas sold to private consumers in order to yield a return of six per cent. In the opinion of the Commission, this price is just and reasonable for a limited period not exceeding six months. It is true that it ignores a probable reduction in the price of oil and coal before the expiration of the six months' period, but on the other hand it makes no allowance for the difference between what the companies actually earned since January 1st, 1918, and what they would have earned had the rates been sufficient to yield a six per cent return during that period.

It is, therefore—

Ordered:

(1.) That the rate to be charged for gas furnished by any public utility to any private consumer in the District of Columbia, for lighting, heating, power, or for any other purpose, shall not exceed ninety-five cents per one thousand cubic feet.

(2.) That this rate shall apply uniformly to all private consumers in the District of Columbia, whether supplied with gas by the
25 Washington Gas Light Company or by the Georgetown Gas Light Company.

(3.) That if any private consumer of gas shall not pay monthly any gas bill within ten days after the same shall have been presented, the gas company may charge and collect from said consumer ten (10) cents additional for each one thousand (1000) cubic feet of gas represented by said bill, as now required by law.

(4.) That this rate shall apply to all gas furnished from March 20, 1919, to September 20th, 1919.

(5.) That on September 20th, 1919, the rate shall be restored automatically to ninety cents per one thousand cubic feet, unless on or before said date the Commission shall have ordered otherwise.

[SEAL.] C. W. KUTZ,
W. GWYNN GARDINER,
Public Utilities Commission of the District of Columbia.

A true copy:

_____,
Executive Secretary.

26 EXHIBIT D.

Statement Showing Amounts of Gas Used Monthly By Plaintiffs Hollis and Goodman Since the Effective Dates of the 90 and 95 Cent Rates and the Dates of Payment and Amount of Gas Bills Paid under Those Dates.

William A. Hollis.

Month in which gas consumed.	Amount in cubic feet.	Rate per M. Cents.	Amount of bill.	When bill was paid.
Mar. 28 to Apr. 27	8,000	90	$7.20	May 14, 1918.
Apr. 27 to May 29	5,400	90	4.86	June 12, 1918.
May 29 to June 29	4,300	90	3.87	July 9, 1918.
June 29 to July 29	2,700	90	2.43	Aug. 10, 1918.
July 29 to Aug. 29	3,000	90	2.70	Sept. 10, 1918.
Aug. 28 to Sept. 27	4,400	90	3.96	Oct. 11, 1918.
Sept. 27 to Oct. 29	2,500	90	2.25	Nov. 11, 1918.
Oct. 29 to Nov. 29	13,500	90	12.15	Dec. 14, 1918.
Nov. 29 to Dec. 30	18,700	90	16.83	Jan. 10, 1919.
Dec. 30 to Jan. 23	16,000	90	14.40	Feb. 5, 1919.
Jan. 23 to Feb. 19	19,000	90	17.10	Mar. 4, 1919.
Feb. 19 to Mar. 19	15,000	90	13.50	Apr. 11, 1919.
	112,500		$101.25	
Mar. 19 to Apr. 16	11,400	95	10.83	May 12, 1919.
	123,900		$112.08	

Service of copy of the above petition acknowledged this 7th day of July, 1919.

CONRAD H. SYME,
Attorney for Public Utilities Commission, District of Columbia.

Leave to Amend Bill.

Filed July 8, 1919.

* * * * * * *

Upon consideration of the motion of plaintiffs to amend their original bill filed in this cause, it is this 8th day of July, 1919,

Ordered that said plaintiffs be, and they are hereby granted leave to amend their said bill in accordance with their motion in this respect.

By the Court:

JENNINGS BAILEY,
Justice.

Amendment to Bill.

Filed July 8, 1919.

* * * * * * *

And now, July 8, 1919, plaintiffs by leave of the Court, amend their bill of complaint by substituting in lieu of paragraph 3 of their bill, the following paragraph, to wit:

3. That said plaintiffs, William Hollis and Sam Goodman, institute this their bill in equity both because they are without an adequate remedy at law, and because paragraph 64 of Section
32 8 of said Act of March 4, 1913, creating the Public Utilities Commission of the District of Columbia, expressly provides that any person interested and being dissatisfied with any order or decision of the said Commission fixing any rate or rates, tolls or charges, may commence a proceeding in equity in this honorable court, against the said Commission to vacate or set aside any such decision or order, on the ground that such rate or rates, tolls or charges complained of fixed in such order is unlawful or unreasonable.

ROSCOE F. WALTER,
Attorney for Plaintiffs.

Motion to Dismiss Amended Bill.

Filed July 8, 1919.

* * * * * * *

Now come the defendants by their attorneys and move the Court to dismiss the amended bill filed herein upon the same grounds stated in their motions to dismiss the original bill.

CONRAD SYME,
Att'y for Defendants Chas. W. Kutz, Louis Brownlow and W. Gwynn Gardiner,
BERRY & MINOR,
J. J. DARLINGTON,
Att'ys for Washington Gas Light Co.

Opinion of Court.

Filed July 8, 1919.

* * * * * * *

As to the motion to dismiss—

1. I think the first ground is well taken.

33 2. I think the plaintiffs are entitled to bring suit under paragraph 64 of the Public Utilities Act.

3. I think the third ground is well taken.

4. I do not think that the fourth ground is well taken.

5. I do not think that the fifth ground is well taken.

BAILEY, *J.*

Decree Dismissing Amended Bill.

Filed July 8, 1919.

* * * * * * *

This cause coming on to be heard on the motion made by the several defendants to dismiss the amended bill of complaint, exhibited herein, and being argued by counsel and considered by the Court, it is this 8" day of July, 1919,

Ordered that the said bill of complaint as amended be, and the same is, hereby dismissed with costs.

By the Court:

JENNINGS BAILEY,
Justice.

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From the foregoing decree the plaintiffs in open court pray for an appeal to the Court of Appeals for the District of Columbia, which is allowed and the amount of the bond for such appeal is fixed at One hundred dollars, or fifty dollars cash deposit.

JENNINGS BAILEY,
Justice.

34 *Memorandum.*

July 9, 1919.—$50 deposited in lieu of appeal bond.

Assignment of Errors.

Filed July 12, 1919.

* * * * * * *

Plaintiffs by their attorney assign the following errors to be presented on appeal in the above case:

1st. The Court erred in holding that the plaintiffs have not in their amended bill of complaint set forth facts entitling them to the relief prayed for,

2nd. The Court erred in holding that the plaintiffs' right of action sought to be enforced in their amended bill is barred by the statute of limitations as provided in Paragraph 65 of Section 8 of the Act of Congress of March 4, 1913, known as "The Public Utilities Act."

3rd. The Court erred in sustaining the motion of the defendants, filed July 8, 1919, to dismiss plaintiffs' amended bill.

ROSCOE F. WALTER,
Attorney for Plaintiffs.

Designation of Record.

Filed July 12, 1919.

* * * * * * *

In preparing the transcript of record on appeal in the above entitled cause, the Clerk will please include the following:

1. Bill of Complaint.

2. Motion of defendants, Charles W. Kutz, Louis Brown-
35 low and W. Gwynn Gardiner, to dismiss, of May 29, 1919.

3. Motion of defendant, the Washington Gas Light Company, to Dismiss, of June 3, 1919.

4. Motion of plaintiffs to Amend of July 8, 1919.

5. Order permitting Amendment of July 8, 1919.

6. Amendment to Bill of July 8, 1919.

7. Motion to Dismiss Amended Bill of July 8, 1919.

8. Opinion of Court.

9. Decree Dismissing Amended Bill with Notation of Appeal, also fixing Bond for Appeal and providing for deposit of $50.00 in lieu of bond, of July 8, 1919.

10. Memorandum of Deposit of $50.00 in lieu of Appeal Bond.

11. Assignment of Errors.

12. This Designation of Record.

ROSCOE F. WALTER,
Attorney for Plaintiffs.

36 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 35, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 36788 in Equity, wherein William Hollis and Sam Goodman are Plaintiffs and Charles W. Kutz, Chairman, &c., et al. are Defendants, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 30th day of July, 1919.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG,
Clerk,
By W. E. WILLIAMS,
Assistant Clerk.

Endorsed on cover: District of Columbia Supreme Court. No. 3296. William Hollis et al., appellants, vs. Charles W. Kutz et al. Court of Appeals, District of Columbia. Filed July 31, 1919. Henry W. Hodges, clerk.

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Wednesday, February 4th, A. D. 1920.

No. 3296.

WILLIAM HOLLIS and SAM GOODMAN, Appellants,

vs.

CHARLES W. KUTZ, Chairman; LOUIS BROWNLOW and W. GWYNN Gardiner, Commissioners of the District of Columbia, and as Such Constituting the Public Utilities Commission of the District of Columbia, and The Washington Gas Light Company.

On consideration of the motion to pass, submitted by Mr. J. J. Darlington of counsel for the appellees, It is ordered by the Court that said motion be and the same is hereby denied, with leave to counsel for the Public Utilities Commission to make argument herein on the first Monday of March next, if so advised.

The argument in the above entitled cause was commenced by Mr. Roscoe F. Walter, attorney for the appellants.

Thursday, February 5th, A. D. 1920.

No. 3296.

WILLIAM HOLLIS and SAM GOODMAN, Appellants,

vs.

CHARLES W. KUTZ, Chairman; LOUIS BROWNLOW and W. GWYNN Gardiner, Commissioners of the District of Columbia, and as Such Constituting the Public Utilities Commission of the District of Columbia, and The Washington Gas Light Company.

The argument in the above entitled cause was continued by Mr. Roscoe F. Walter, attorney for the appellants, and by Mr. J. J. Darlington, attorney for the appellees. On motion the appellees are allowed to file additional references, with leave to appellants to reply if so advised.

Tuesday, March 2nd, A. D. 1920.

No. 3296.

WILLIAM HOLLIS and SAM GOODMAN, Appellants,

vs.

CHARLES W. KUTZ, Chairman; LOUIS BROWNLOW and W. GWYNN Gardiner, Commissioners of the District of Columbia, and as Such Constituting the Public Utilities Commission of the District of Columbia, and The Washington Gas Light Company.

The argument in the above entitled cause was concluded by Mr. C. H. Syme, attorney for the Public Utilities Commission.

In the Court of Appeals of the District of Columbia.

No. 3296.

WILLIAM HOLLIS and SAM GOODMAN, Appellants,

vs.

CHARLES W. KUTZ, Chairman; LOUIS BROWNLOW and W. GWYNN GARDINER, Commissioners of the District of Columbia, and as Such Constituting the Public Utilities Commission of the District of Columbia, and The Washington Gas Light Company, Appellees.

Opinion.

Opinion of the Court per Mr. Justice Van Orsdel.

Appellants, plaintiffs below, filed a bill in equity in the Supreme Court of the District of Columbia against defendants, Charles W. Kutz, Louis Brownlow and W. Gwynn Gardiner, Commissioners of the District of Columbia, and, as such, constituting the Public Utilities Commission of the District, and the Washington Gas Light Company, to set aside certain orders of the commission increasing gas rates in the District of Columbia.

The proceedings complained of were had at the instance of the Washington Gas Light Company under section 8 of the act of Congress of March 4, 1913, (37 Stats. L., 974), which resulted in an order by the commission on March 15, 1918, in Formal Case No. 13, advancing the price of gas from 75¢ to 90¢ per thousand cubic feet, and a second order on March 15, 1919, in Formal Case No. 70, advancing the price from 90¢ to 95¢ per thousand cubic feet. Plaintiffs pray that a decree be entered setting aside each of these orders, and that the gas light company be required to refund to plaintiffs the amount collected from them in advance of 75¢ per thousand cubic feet, with interest, and for such further relief as the case may require.

On motion of defendants, the bill was dismissed, and from the decree this appeal was prosecuted.

The appeal can be disposed of upon a single question of jurisdiction. Plaintiffs were not parties to the proceeding before the commission. It is averred "that on December 10, 1918, at the hearing before the Public Utilities Commission in Formal Case No. 70, aforesaid, there was entered the appearance of a certain Roscoe F. Walter in opposition to the proposed increase in gas rates in such case, the same appearing on behalf of himself, and certain others, citizens of Takoma Park, District of Columbia." It is nowhere alleged that Walter represented plaintiffs either as attorney or agent, or that plaintiffs in any respect sought to intervene or object to the proceedings before the commission, or that they filed any complaint or instituted any proceeding to have the order of the commission set aside or modified. On the contrary, they allege that this suit is brought

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"under and by virtue of Paragraph 64" of the act creating the utilities commission, which provides as follows: "That any public utility and any person or corporation interested being dissatisfied with any order or decision of the commission fixing any valuation, rate or rates, tolls, charges, schedules, joint rate or rates, or regulation, requirement, act, service or other thing complained of may commence a proceeding in equity in the Supreme Court of the District of Columbia against the commission, as defendants, to vacate, set aside, or modify any such decision or order on the ground that the valuation, rate or rates, tolls, charges, schedules, joint rate or rates, or regulation, requirement, act, service or other thing complained of fixed in such order is unlawful, inadequate, or unreasonable."

The portions of the act under which proceedings may be instituted before the commission are as follows:

"Par. 38. That upon its own initiative or upon reasonable complaint made against any public utility that any of the rates, tolls, charges, or schedules, or services * * * are in any respect unreasonable or unjustly discriminatory * * * the commission may, in its discretion, proceed, with or without notice, to make such an investigation as it may deem necessary or convenient. But no order affecting said rates, tolls, charges, schedules, regulations, or act complained of shall be entered by the commission without a formal hearing.

"Par. 39. That the commission shall prior to such formal hearing notify the public utility complained of that a complaint has been made, and ten days after such notice has been given the commission may proceed to set a time and place for a hearing and an investigation as hereinafter provided.

"Par. 40. That the commission shall give the public utility and the complainant, if any, ten days' notice of the time and place when and where such hearing and investigation will be held and such matters considered and determined. Both the public utility and complainant shall be entitled to be heard and shall have process to enforce the attendance of witnesses."

It thus appears that proceedings may be instituted by the utilities commission on its own motion, or by a public utility, as in the present case, seeking a readjustment of its rates, or by an interested party, who may make a formal complaint against the utility. This right of action against the utility will lie whether the matters complained of originate with the utility or grow out of an order of the commission. In any event, however, formal complaint must be filed, hearing had, and a final order obtained from the commission, before the jurisdiction of the courts can be invoked.

The equitable proceeding in the Supreme Court of the District of Columbia under paragraph 64 is in the nature of an appeal rather than an original suit. The act contemplates that it shall be heard upon a transcript of the record made before the commission, and not alone upon evidence adduced at the trial, though additional evidence may be offered. However, if additional evidence is offered by the plaintiff, differing from that offered at the hearing, the proceedings in equity must be suspended pending further proceedings by

the commission. The procedure in this respect is defined in paragraph 67 of the act, as follows: "That if upon trial of such proceeding or suit evidence shall be introduced by the plaintiff which is found by the court to be different from that offered upon the hearing before the commission or its authorized agent, or additional thereto, the court before proceeding to render judgment, unless the parties to such action stipulate in writing to the contrary, shall transmit a copy of such evidence to the commission, and shall stay further proceedings in said proceeding for fifteen days from the date of such transmission. Upon the receipt of such evidence the commission shall consider the same and may alter, modify, amend, or rescind its order relating to such valuation, rate or rates, tolls, charges, schedules, joint rate or rates, time schedules, regulations, act, or service complained of in said action, and shall report its action thereon to said court within ten days from receipt of such evidence."

It is not contemplated that any resident of the District, feeling himself aggrieved, may rush into the courts without first submitting his case to the utilities commission, whose duty it is primarily to hear and adjust and, if possible, finally dispose of such complaints. It follows that, in the absence of any complaint by plaintiffs, or hearing upon a formal case submitted to the commission, there is no basis for the present action.

The decree dismissing the bill is affirmed with costs.

Affirmed.

Monday, April 5th, A. D. 1920.

April Term, 1920.

No. 3296.

WILLIAM HOLLIS and SAM GOODMAN, Appellants,

vs.

CHARLES W. KUTZ, Chairman; LOUIS BROWNLOW, and W. GWYNN GARDINER, Commissioners of the District of Columbia, and as Such Constituting the Public Utilities Commission of the District of Columbia, and The Washington Gas Light Company.

Appeal from the Supreme Court of the District of Columbia.

This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia, and was argued by counsel. On consideration whereof, It is now here ordered, adjudged and decreed by this Court that the decree of the said Supreme Court in this cause be and the same is hereby affirmed with costs.

PER MR. JUSTICE VAN ORSDEL.

April 5, 1920.

Mr. Justice Robb did not sit in this case.

POOR COPY

In the Court of Appeals of the District of Columbia.

No. 3296.

WILLIAM HOLLIS and SAM GOODMAN, Appellants,

vs.

CHARLES W. KUTZ et al., Appellees.

Prayer for Allowance of Appeal.

Now come the appellants in the above-entitled cause and pray the Court for the allowance of an appeal to the Supreme Court of the United States, and ask that the bond for costs be fixed on the same. For reasons, the appellants say they believe themselves entitled to this appeal under the fifth paragraph of Section 250 of the Act to Codify the Laws Relating to the Judiciary, approved March 3, 1911.

ROSCOE F. WALTER,
Attorney for Appellants,
By HERMAN FELTER.

Endorsed: No. 3296. William Hollis et al. v. Charles W. Kutz et al. Motion for allowance of appeal to Supreme Court, U. S. Court of Appeals, District of Columbia. Filed April 15, 1920. Henry W. Hodges, Clerk.

Friday, April 16th, A. D. 1920.

No. 3296.

WILLIAM HOLLIS and SAM GOODMAN, Appellants,

vs.

CHARLES W. KUTZ, Chairman; LOUIS BROWNLOW, and W. GWYNN Gardiner, Commissioners of the District of Columbia, and as Such Constituting the Public Utilities Commission of the District of Columbia, and The Washington Gas Light Company.

On consideration of the motion for the allowance of an appeal to the Supreme Court of the United States in the above entitled cause, It is by the Court this day ordered that said appeal be and the same is hereby allowed and the bond for costs is fixed at the sum of three hundred dollars.

In the Court of Appeals, District of Columbia.

No. 3296.

WILLIAM HOLLIS and SAM GOODMAN, Appellants,

vs.

CHARLES W. KUTZ et al.

Amended Prayer for Allowance of Appeal.

Now come the appellants in the above entitled cause and pray the Court for the allowance of an appeal to the Supreme Court of the United States, and ask that a cash deposit be named in lieu of a bond for costs.

For reasons, the appellants say they believe themselves entitled to this appeal under both the fifth paragraph of Section 250 of the Act to codify the Laws Relating to the Judiciary, approved March 3, 1911, and under the 64th paragraph of Section 8 of an Act of Congress of March 4, 1913, entitled "An act making appropriations for the expenses of the Government of the District of Columbia for the fiscal year ending June 30, 1914, and for other purposes, approved March 4, 1913.

ROSCOE F. WALTER.
Attorney for Appellants.

(Endorsed:) No. 3296. William Hollis, et al., appellants, vs. Charles W. Kutz, et al. Motion to make cash deposit on appeal in lieu of bond; also to amend prayer for appeal. Court of Appeals, District of Columbia, filed Jun- 2, 1920. Henry W. Hodges, Clerk.

Wednesday, June 2nd, A. D. 1920.

No. 3296.

WILLIAM HOLLIS et al., Appellants,

vs.

CHARLES W. KUTZ, &c., et al.

The motion for leave to make a cash deposit of one hundred dollars in lieu of filing bond for costs on appeal in the above entitled cause and to amend the prayer of appeal, was submitted to the consideration of the Court by Mr. Roscoe F. Walter, attorney for the appellants, in support of motion. On consideration whereof, It is by the Court this day ordered that said motion be and the same is hereby granted.

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Memorandum.

June 3, 1920.—One hundred dollars deposited with the Clerk in lieu of bond for costs on appeal.

UNITED STATES OF AMERICA, *ss:*

To Charles W. Kutz, Chairman; Louis Brownlow and W. Gwynn Gardiner, Commissioners of the District of Columbia, and as such Constituting the Public Utilities Commission of the District of Columbia, and the Washington Gas Light Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal, filed in the Clerk's Office of the Court of Appeals of the District of Columbia, wherein William Hollis and Sam Goodman are appellants and you are appellees, to show cause, if any there be, why the decree rendered against the appellants, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Constantine J. Smyth, Chief Justice of the Court of Appeals of the District of Columbia, this 3rd day of June, in the year of our Lord one thousand nine hundred and twenty.

CONSTANTINE J. SMYTH,
Chief Justice of the Court of Appeals of the District of Columbia.

Service acknowledged:
F. H. STEPHENS,
For Com'rs.
BENJ. S. MINOR,
Per H. B. R.,
Counsel for Appellees.

[Stamped:] Court of Appeals, District of Columbia. Filed Jun. 10, 1920. Henry W. Hodges, Clerk.

Court of Appeals of the District of Columbia.

I, Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages numbered from 1 to 38 inclusive constitute a true copy of the transcript of record and proceedings of said Court of Appeals in the case of William Hollis and Sam Goodman, Appellants, vs. Charles W. Kutz, Chairman; Louis Brownlow and W. Gwynn Gardiner, Commissioners of the District of Columbia, and as such constituting the Public Utilities Commission of the District of Columbia, and the Washington Gas Light Company. No. 3296, April Term, 1920, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the City of Washington, this 10th day of June, A. D. 1920.

[Seal Court of Appeals, District of Columbia, 1893.]

HENRY W. HODGES,
Clerk of the Court of Appeals of the District of Columbia.

Assignments of Error.

1. The Honorable the Court of Appeals of the District of Columbia erred:

(*a*) In affirming the decree of the Supreme Court of the District of Columbia, which dismissed the plaintiffs' amended bill of complaint.

(*b*) In finding that the plaintiffs in error, plaintiffs in the Supreme Court of the District of Columbia, are not persons interested within the meaning of that term as used in paragraph 2 of Paragraph 64 of the Public Utilities Law, Section 8 of An Act Making Appropriations to Provide for the expenses of the Government of the District of Columbia for the fiscal year ending June 30, 1914, and for other purposes, approved March 4, 1913.

(*c*) In finding that the equitable proceeding in the Supreme Court of the District of Columbia, contemplated by Paragraph 64 of Section 8 of said Act of March 4, 1913, is in the nature of an appeal rather than an original suit.

(*d*) In affirming the decree of the Supreme Court of the District of Columbia, and which denied to the plaintiffs in error the relief sought by their amended bill of complaint.

[Endorsed:] File No. 27,754. Supreme Court U. S., October Term, 1919. Term No. 397. William Hollis and Sam Goodman, Appellants, vs. Charles W. Kutz, Chairman, et al. Assignment of Errors. Filed June 15, 1920.

Endorsed on cover: File No. 27,754. District of Columbia Court of Appeals. Term No. 397. William Hollis and Sam Goodman, appellants, vs. Charles W. Kutz, Chairman; Louis Brownlow, and W. Gwynn Gardiner, Commissioners of the District of Columbia, and as such constituting the Public Utilities Commission of the District of Columbia, and The Washington Gas Light Company. Filed June 15th, 1920. File No. 27,754.

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